



June 4, 2019

Via Email (WMDem.Submission@mail.house.gov)

Honorable Lloyd Doggett
Chairman House Ways and Means Health Subcommittee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Submission of Written Comments
Hearing: "Protecting Patients From Surprise Medical Bills" (5.21.19)
Ways and Means Committee: Health Subcommittee

Dear Chairman Doggett:

ProPath Holdings, PLLC ("ProPath") is pleased to submit these written comments in connection with the above-referenced hearing (the "Hearing") and the national efforts to address unanticipated out-of-network medical billing referred to as "surprise medical billing".

For the reasons stated below, we strongly support comprehensive federal legislation to address the challenge of unanticipated out-of-network medical billing in a manner that is consistent across all states and are pleased to submit proposals as set forth below for your consideration.

Who is ProPath?

ProPath is a provider of anatomic pathology services and clinical laboratory testing to clinicians and medical facilities across the nation. While we have very deep roots in our local Dallas, Texas community we serve patients and providers throughout the country and are very proud to have been doing so for over 50 years. As a CAP and CLIA certified medical laboratory the ProPath team of board-certified physicians offer subspecialty anatomic and clinical pathology expertise in twenty diagnostic areas such as molecular diagnostics, women's health, pediatric pathology, gastrointestinal pathology, hematopathology, renal pathology and urologic pathology. Our dedicated team routinely provides time-sensitive and critical interpretations and diagnoses to clinical laboratories, hospitals, physicians, clinics and surgery centers, and governmental agencies.

What does it mean to be an Out-of-Network Provider?

ProPath participates in Medicare and Medicaid programs. ProPath also contracts with private commercial payors to facilitate providing greater access to ProPath's services to the payors' members and contracted providers as an in-network provider. ProPath, however, is also an out-of-network service provider. This occurs on a frequent basis for providers of ancillary services because the current healthcare insurance market dynamics continue to foster a healthcare landscape that allows private payors to build and maintain networks that force ancillary service providers into out-of-network pools.

We find that our services as an out-of-network provider are typically triggered by the following scenarios: (i) the patient is receiving legitimate emergency care and the treating providers or facility does not have time to confirm our network status relative to the patient's emergency diagnostic or lab testing needs; (ii) the treating physician has not advised their patient that our services will be out-of-network, and the patient was under the impression that the entire episode of care would be in network; (iii) the treating physician has advised their patient that our services will be out-of-network but the patient did not fully understand the financial impact of that network designation, or did not understand they could request an alternative in-network ancillary service provider; (iv) the patient's insurance changed and the confirmation that our services were out-of-network did not occur until after the services had been provided; or (v) the patient made an informed decision to approve the use of our services as an out-of-network provider.

Each of the foregoing examples will result in an out-of-network bill for the delivery of the pathology or clinical diagnostic services or laboratory tests that were performed on the patient's behalf resulting in the patient's "surprise" at the out-of-network cost compared to the in-network rates. This often leads to such patients contacting the medical service provider both "surprised" and outraged by the higher out-of-network costs.

What options do the providers have at this point to resolve the situation? Not many unfortunately. Matching the in-network rates is not typically an option that is available to providers. What about discounts or waivers? Those work in cases where the patient meets certain financial hardship standards; however, if they do not meet such standards or qualify for charitable assistance the options become limited. Additionally, federal regulations enacted to protect the federal healthcare programs from fraud and abuse limit a provider's ability to offer discounts and waivers. What about the states? Provider efforts to resolve out-of-network costs are further compounded if the state has a "surprise billing" law in place that forces the parties into unrealistic dispute resolution proceedings.

ProPath supports comprehensive federal legislation with explicit options and clear guidelines that are financially sensitive to the patients, commercially supportive of the providers and payors, and uphold the regulatory safeguards that have been enacted to protect government sponsored healthcare programs.

Multi-State Patchwork

In the absence of comprehensive federal legislation to address unanticipated out-of-network medical bills, states are racing to put in place surprise billing rules and regulations in an effort to alleviate the “surprise billing” concerns many of the residents and constituents of such states have been enduring; however, for ancillary service providers that deliver services on a national basis as an out-of-network medical provider, the reality of a multi-state patchwork of “surprise billing” laws creates a different kind of problem.

What is the solution for the national provider? Different policies on a state-by-state basis? Forgoing the delivery of service to certain states that are overly restrictive to out-of-network billing? What will the impact be to our healthcare goals of improving patient access and enhancing quality of care? How do the efforts by the states that are enacting “surprise billing” regulations impact patients that are covered under self-insured plans?

Proposal

In support of comprehensive federal legislation that addresses unanticipated out-of-network medical billing we propose the following for your consideration:

1---Emergency Services: Allow providers to charge rates as if they were an in-network provider for the applicable facility and services.

2—Non-Emergency Services: Allow providers to charge rates at the greater of (x) 125 percent of Medicare published rates for the same or similar service, or (y) up to 125 percent¹ of the average allowed amount for all private health plans and health insurance issuers for the same or similar

¹ ProPath desires to highlight that it can be inherently difficult to set one fixed provider rate percentile due in part to the multiple fee schedules that apply to providers based upon their specialty and participation in federal programs (e.g., the physician fee schedules (PFS) and clinical lab fee schedules (CLFS)). In the clinical lab space, for example, rates can be impacted as a result of new testing, panels or even the Protecting Access to Medicare Act of 2014 (PAMA).

specialty and provided in the same geographic area, but in no event less than what is being charged to Medicare beneficiaries for similar services and items.

3---Prohibitions: Prohibit the use of impermissible blanket arrangements such as out-of-network waivers, out-of-network agreements, waivers of co-pays, waivers of deductibles, or waivers of cost-sharing charges. Permit financial arrangements on a case-by-case basis that consider the financial status of the applicable patient in accordance with the provider's charitable care and financial assistance policies so long as uniformly applied to beneficiaries of Medicare and private insurance.

4—Network Status Confirmation: Require that providers continue to obtain patient pre-authorization for out-of-network provider usage in non-emergency scenarios.

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Honorable Lloyd Doggett
Chairman House Ways and Means Health Subcommittee
June 4, 2019
Page 5

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Conclusion

Thank you for the opportunity to submit our comments and views on this very important matter that impacts each and every individual in the country. We offer our support and assistance to Congress in its efforts to develop a comprehensive federal legislative solution and remain very appreciative of the Ways and Means Committee in its effort to resolve the unanticipated out-of-network medical billing or “surprise billing” epidemic that is sweeping the country.

Sincerely,

/ Cory A. Roberts, MD /

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